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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Stefan Bruening

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EXAMINER

CORNO JR, JAMES A

ART UNIT

PAPER NUMBER

1793

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DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,111	Applicant(s) BRUENING ET AL.	
	Examiner JAMES CORNO	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see pages 2-4, filed January 12, 2009, with respect to the rejection(s) of claim(s) 24-52 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nieendick et al. (WO 02/056839 A2; referring to US 2004/0086470 A1 as a direct translation), Ansmann et al. (US Patent No. 6,365,168), Fogel (US Patent No. 5,840,285), and Bücheler, et al. (U.S. Patent No. 4,996,004).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nieendick et al. (WO 02/056839 A2; referring to US 2004/0086470 A1 as a direct translation). Nieendick teaches a wax dispersion with an average particle size of 12 µm comprising a wax phase with a melting point above 55°C and a water phase (paragraph 0002; Table 1). Nieendick teaches that the wax phase includes an emulsifier and may comprise a C¹⁶-C²² fatty ether or fatty carbonate (paragraphs 0026-

0029). It would have been obvious to one of ordinary skill in the art at the time of the invention to select fatty ethers or carbonates from the list of suitable waxes with a reasonable expectation of success.

Regarding claim 25, Nieendick gives examples with wax phase components ranging from 30-66% of the composition, with the balance consisting of water (Table 1).

Regarding claim 26, Nieendick teaches the use of nonionic emulsifiers (claim 1).

Regarding claim 28, Nieendick teaches particle sizes of 12-13 μm .

Regarding claim 29, it is assumed that the components used by Nieendick are essentially pure and are, therefore, free of water.

Regarding claim 51, Nieendick teaches that the claimed composition may be used in a cosmetic (body care) preparation.

Claims 24-43 and 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansmann et al. (US Patent No. 6,365,168) in view of Fogel (US Patent No. 5,840,285). Ansmann teaches a wax dispersion with particles 12-14 μm in diameter (col. 2, line 20) in which the wax phase comprises a dialkyl ether, an emulsifier, and water (claim 7). Ansmann does not teach that the wax phase has a melting point above 25°C. Fogel teaches that cosmetic solids ideally melt at body temperature (37°C; col. 1, lines 26-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to select the ideal melting point for the solid phase of the composition.

Regarding claim 25, Ansmann gives examples in which the wax phase is approximately 15% of the composition, with the balance water (Table 1).

Regarding claim 26, Ansmann teaches the use of nonionic surfactants (emulsifiers).

Regarding claim 27, body temperature falls within the claimed range.

Regarding claim 28, Ansmann teaches a particle size of 12-14 μm .

Regarding claim 29, it is assumed that the components used by Ansmann are essentially pure and are, therefore, free of water.

Regarding claims 30 and 31, Ansmann teaches that the composition may also include additional oil or wax components, including triglycerides (col. 6, lines 33-54; col. 8, lines 1-21).

Regarding claims 32 and 33, Ansmann teaches that the composition includes a cationic polymer such as cellulose derivatives (polysaccharides; col. 2, lines 21-23).

Regarding claim 34, Ansmann teaches that the composition may include active components (col. 6, lines 24-32).

Regarding claim 35, Ansmann teaches that the composition may include glycerol or propylene glycol (col. 8, lines 56-58), both of which are humectants.

Regarding claim 36, Ansmann teaches a wax dispersion comprising 0.1-5% dialkyl ether, 1-50% nonionic emulsifier, 0.1-5% cationic polymer, 5-40% additives, with the balance water. Ansmann also teaches that the additives may include oils, superfatting agents, and waxes (col. 6, lines 24-32).

Ansmann and the claims differ in that Ansmann does not teach the exact same composition ranges as recited in the instant claims.

However, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the ranges taught by Ansmann overlap the instantly claimed ranges and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the ranges disclosed in the prior art reference, including the instantly claimed ranges, particularly in view of the fact that;

“The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages”, In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malagari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05.

Regarding claims 37 and 38, Ansmann teaches 0.1-5% cationic polymer such as modified cellulose (a polysaccharide).

Regarding claim 39, body temperature falls within the claimed range.

Regarding claim 40, Ansmann teaches a particle size of 12-14 μm .

Regarding claim 41, it is assumed that the components used by Ansmann are essentially pure and are, therefore, free of water.

Regarding claim 42, Ansmann teaches that the composition may include active components (col. 6, lines 24-32).

Regarding claim 43, Ansmann teaches that the composition may include glycerol or propylene glycol (col. 8, lines 56-58), both of which are humectants.

Regarding claims 51-52, Ansmann teaches that the composition may be used as a body care preparation (col. 6, lines 24-32).

Claims 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansmann in view of Fogel as applied to claim 24 above, and further in view of Bücheler, et al. (U.S. Patent No. 4,996,004). Ansmann in view of Fogel teaches the claimed dispersion, including the use of a polymer, but it fails to teach the claimed production method. However, Bücheler teaches a preparation method for stable cosmetic dispersions of organic substances in water with fine particle size control. This preparation method consists of (1) creating a preliminary emulsion of melted wax and water and (2) spraying this preliminary emulsion into a cooling tank filled with water below the melting point of the solid (col. 5, lines 42-58). Bücheler also teaches that this method confers several efficiency advantages over convention homogenizers. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bücheler to produce the composition of Ansmann in order to maximize process efficiency while producing a stable cosmetic preparation.

Regarding claim 45, Bücheler teaches a homogenization step for the pre-emulsion prior to introduction to the cooling tank (col. 3, lines 56-68).

Regarding claim 46, Bücheler teaches a cooling step for the pre-emulsion before adding it to the cooling tank (col. 6, lines 7-11).

Regarding claim 47-48, Bücheler teaches the addition of the desired emulsifier to the pre-emulsion before addition to the cooling tank (col. 5, lines 42-58). Ansmann teaches the use of a polysaccharide as the emulsifier (col. 8, lines 25-34).

Regarding claim 49, Bücheler teaches the use of a pressure nozzle for homogenization.

Regarding claim 50, the claimed ranges are anticipated by anticipated by Ansmann.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES CORNO whose telephone number is (571)270-5829. The examiner can normally be reached on Monday-Thursday 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melvin Curtis Mayes can be reached on 571-272-1234. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES CORNO/
Examiner, Art Unit 1793

JC
March 1, 2009

/Melvin Curtis Mayes/
Supervisory Patent Examiner, Art Unit 1793